

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 824 of 2001()

CC.914/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM
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REVN. PETITIONER:

DR.K.VASUDEVAN PILLAI, KARINGOTTU VEEDU, NJARACKAL CHERI,
THRIKKARUVA VILLAGE, KOLLAM.

BY ADV. SRI.N.RAMACHANDRAN NAIR (VARINJAM)

RESPONDENTS:

1. REJI, S/O.CHELLAPPAN PILLAI, AMBUJA MANDIRAM (THEKKEVILAYIL)
THOTTUMUGHOM, MYNAGAPPILLI SOUTH.

2. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJED ALI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 01/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Dated this the 1st day of December, 2007.

ORDER

This Revision Petition is at the instance of the complainant in a private complaint which was filed alleging commission of offences punishable under Sections 448, 497, 379 and 363 IPC. The trial court after considering the oral and documentary evidence on record found the respondent/accused guilty under Section 497 IPC, but acquitted him of the charge under Section 363 and 379 IPC. It is contended by the petitioner that the order of acquittal of the accused under section 379 and 363 is illegal and unsustainable.

2. This Revision Petition was filed in October 2000. Notice was ordered to the respondent on July 13, 2001. Petitioner had paid process only on July 11, 2002. Notice was issued by the Registry on July 25, 2002 with hearing date on August 16, 2002. When this petition came up before the Bench on October 30, 2007 notice by speed post was ordered and the case was adjourned to November 30, 2007. But when the case was taken up on that date, it was noticed that the petitioner had not paid process. Therefore the case was posted today. Neither the petitioner nor the counsel is present

3. I have gone through the available records and heard learned Public Prosecutor also.

4. The case of the complainant was that the accused who was living in his neighbourhood had indulged in “illicit sexual

intercourse” with his wife with the knowledge that the complainant was her husband. The accused was found inside the house of the complainant in suspicious circumstances and on those occasions the complainant had warned the accused. The complainant alleged that on February 2, 1995 at about 6 p.m., the accused kidnapped his wife and the minor daughter from his lawful custody. He had stolen television, fridge etc. and had also abetted his wife to take away ornaments weighing 70 sovereigns which were kept in a Bank locker.

5. Though the complainant had initially filed a complaint before the court in this connection it was referred to the Police under Section 156(3) of the Code of Criminal Procedure for investigation. But the Police had referred the case as mistake of fact. According to the complainant, the Police had filed the “refer report” because of the political influence exerted by the accused. It was thereafter that the petitioner had preferred the present “protest complaint” which resulted in the impugned judgment.

6. The complainant was examined as Pw.1 and other witnesses were examined as Pws.2 to 4. Exts.P1 to P5 were also marked on the side of the prosecution. On the side of the defence Dws.1 and 2 were examined and Ext.D1 was marked. The learned Magistrate, after an elaborate consideration of the oral and documentary evidence on record, found that the prosecution had failed to prove the charge against the accused under Sections 363 and 379 IPC.

7. It had come out in evidence that Dw.2, the wife of the complainant, had received summons from the Court at the address of

the accused. While she was examined as DW.2 she had stated that she was residing in her own house. But the said version was disbelieved by the court below.

8. It had further come out in evidence that the complainant himself had admitted that gold ornaments were lying in a bank locker which was jointly operated by the complainant and his wife. Ext.D1 produced by the accused on the side of the defence clearly established this fact. Moreover, the complainant himself had admitted that bank locker was being operated by himself and his wife. Further, there was absolutely no evidence to establish the case of the complainant that the accused had stolen Television, Fridge etc. In that view of the matter the learned Magistrate, in my view was justified in acquitting the accused under section 379 IPC.

9. While considering the evidence adduced by the complainant in respect of the charge under Section 363 IPC, it was noticed by the court below that the complainant had no case in Ext.P3 that the accused had kidnapped his daughter from his lawful custody. It had come out in evidence that the complainant's wife had left the house with the daughter on her own volition. The court below found that the mother being the legal custodian of the minor girl and also in the absence of any evidence to show that the accused had kidnapped the minor girl from her legal custody, the accused was entitled to get an order of acquittal as regards that charge.

10. It was noticed by the learned Magistrate that the complainant was paying maintenance to his daughter under Section 125

of the Code of Criminal Procedure as ordered by the court in M.C.No.132/1999. It was further noticed that the complainant had filed the complaint alleging kidnapping of his minor daughter only on March 23, 1995, though the alleged kidnapping had occurred on February 2, 1995. The delay was not explained by the complainant at all. Thus the court below found, rightly in my view, that the complainant had failed to prove that the accused had kidnapped his minor daughter.

11. Having carefully gone through the judgment and other relevant materials on record, I do not find any illegality or irregularity in the order of acquittal passed against the respondent under Sections 363 and 379 IPC. The view taken by the learned Magistrate is eminently a probable and plausible one. The power that can be exercised by this Court under Section 397 of the Code in a case of acquittal is undoubtedly very narrow and limited. In the absence of any material irregularity on the face of the record, I am not satisfied that any interference is warranted in this case. The conduct of the petitioner in prosecuting this case also is far from satisfactory as noticed above.

Having carefully examined the materials available on record, I do not find any merit in the revision petition. Therefore the revision petition is dismissed.

A.K. Basheer
Judge.

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